

01/03

Before the Idaho Water Resource Board

RECEIVED

MAY 30 2003

DEPARTMENT OF
WATER RESOURCES

**APPLICATION TO RENT WATER
FROM THE WATER SUPPLY BANK**

Applicant Idaho Ground Water Appropriators, Inc. Phone 208-890-4014

Address c/o Lynn Tominaga, P.O. Box 2624

City Boise State ID Zip Code 83701-2624

A. DESCRIPTION OF WATER SOUGHT TO RENT

1. Source of water Ground water – See attached Private Lease
tributary to _____.
2. Maximum volume of water 6820 AF.
3. Maximum rate of diversion _____ cfs.

B. DESCRIPTION OF USE PROPOSED

1. Nature of intended use 2006 Mitigation
2. Location of point of diversion ¼ ¼, Section _____,
Township _____, Range _____, B.M. _____ County _____.
3. Season of use: From _____ to _____.
4. Description of diverting works:
Pump HP _____ Lift _____ Pump type _____.
Canal name, if appropriate _____.
5. Place of use:
 - a. If water is for irrigation, describe the number of acres to be irrigated by
40-acre tract, section, township and range.
See attached partial decrees and claim.

b. If water is not for irrigation, describe the nature of the intended use and the place of use.

2006 Mitigation

6. Describe any other water rights used for the same purposes as rental water sought under this application.

See attached partial decrees and claim.

7. Who owns the property at the point of diversion?

N/A

8. Who own the property at the point of use?

N/A

9. Are you seeking a rental for more than one (1) year? No (yes or no)

If yes, for how many years? _____

10. Remarks:

Ground Water Districts renting through IWRB Water Bank for potential 2006 mitigation.

5/30/06
Date


Signature of Applicant
Executive Director, IGWA

FOR DEPARTMENT USE ONLY

Received by _____ Date _____ Time _____

Published in _____ Pub. Dates _____

Protests filed by _____

Hearing held by _____

Action recommended _____

GIVENS PURSLEY LLP

LAW OFFICES

601 W. Bannock Street
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300
WEBSITE: www.givenspursley.com

Gary G. Allen
Kristen A. Atwood
Kelly T. Barbour
Christopher J. Beeson
William C. Cole
Michael C. Creamer
Thomas E. Dvorak
Roy Lewis Eiguren
Jeffrey C. Fereday
Martin C. Hendrickson
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Debora K. Kristensen
Anne C. Kunkel
Jeremy G. Ladle

Franklin G. Lee
David R. Lombardi
John M. Marshall
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Judson B. Montgomery
Angela K. Nelson
Deborah E. Nelson
W. Hugh O'Riordan, LL.M.
Bradley V. Sneed
H. Barton Thomas, LL.M.

J. Will Varin
Conley E. Ward
Robert B. White

Kenneth L. Pursley
RETIRED

Raymond D. Givens
RETIRED

James A. McClure
RETIRED

Via Facsimile & U.S. Mail

May 30, 2006

Lyle Swank
Idaho Department of Water Resources
Eastern Regional Office
900 North Skyline Dr.
Idaho Falls, ID 83402-6105

Re: FMC, Idaho L.L.C. 2006 Lease

Dear Mr. Swank:

I am writing on behalf of the American Falls, Bingham and Bonneville-Jefferson Ground Water Districts ("Districts") to advise you that they have renewed a private lease of water rights from FMC, Idaho L.L.C. for 2006, and wish to arrange for the 5,000 acre-feet of Palisades storage included in the lease to be delivered by Water District 01 for mitigation purposes in 2006 as directed by the Districts. A copy of the FMC Lease is enclosed.

Arrangements have been made with the North Side Canal Company, and the Districts intend that this water will be made available, for delivery into North Side's system as may be necessary to provide irrigation water for lands in Water District 130 converted from ground water to surface water supplies and/or for other mitigation actions.

The Districts agree to pay the appropriate rental pool costs for this storage water.

Please direct any questions you may have concerning this request and concerning payment of the rental pool fees to Mr. Lynn Tominaga, Executive Director of Idaho Ground Water Appropriators, Inc. ("IGWA")

Sincerely,



Michael C. Creamer

Enclosure

cc: Craig Evans Tim Deeg William Taylor Randy Budge
Lynn Tominaga Lynn Carlquist Orlo Maughan

MCC:kdt S:\CLIENTS\3915\78\MCC Letter to Lyle Swank re FMC Storage Rental DOC

LEASE OF WATER RIGHTS

Lease Agreement made and entered into May 22nd, 2002, between FMC IDAHO, L.L.C., whose address is P.O. Box 4111, Pocatello, Idaho 83202 (hereinafter "Lessor") and AMERICAN FALLS-ABERDEEN AREA GROUND WATER DISTRICT, BINGHAM GROUND WATER DISTRICT, and BONNEVILLE-JEFFERSON GROUND WATER DISTRICT, whose address is in care of Timothy P. Deeg, P.O. Box 70, American Falls, Idaho 83211 (hereinafter "Lessee");

1. **Leased Property.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor certain water rights identified by the records of the Idaho Department of Water Resource ("IDWR") as follows:

Water Right No.	Priority	Quantity	Purpose
A29-02284	3/02/49	4.5 cfs	Industrial
A29-2301	4/24/51	3.82 cfs*	Industrial
A29-11342	7/24/52	<u>1.10 cfs</u> 9.42 cfs	Municipal

(*FMC retaining 0.18 cfs for continuing plant needs.)

Together with 5000 AF of Palisades Storage pursuant to U.S. Department of Interior, Bureau of Reclamation, Contract No. 14-06-100-1836, Palisades Water Users, Inc. - A01-10214.

2. **Term.** The term of this Lease shall be for a term of one (1) year, commencing April 15, 2002, and terminating on April 14, 2003. Thereafter, this Lease will be automatically renewed and extended for successive additional one-year terms, unless and until terminated by either party as hereafter provided.

Either party may terminate this Lease at the end of any lease term upon not less than ninety (90) days advance written notice.

3. **Rent.** For the use of the lease property Lessee shall pay to Lessor on or before April 15 of each year rent in the amount of \$2.95 per acre foot for ground water and \$3.45 per acre foot for Palisades Storage. The rent shall be due upon approval of the lease by IDWR allowing the use of the water by Lessee for mitigation purposes.

3.1 The calculated amount of ground water pursuant to this Lease is 18.68 AF per day or 6,819.87 AF per year based upon the historic year-round use of these rights. This amount is subject to adjustment to the actual amount which IDWR will credit Lessee for mitigation purposes.

3.2 Lessor has retained all of Water Right No. A29-02255E and A29-2255C, plus 0.18 cfs of Water Right No. A29-2301 to meet continuing water needs at Lessor's Pocatello plant for culinary purposes, irrigation of

landscaping, dust control and other industrial purposes calculated by Lessor to be necessary for such purposes.

4. Non-Use by Lessor. Lessor covenants that it will not divert or utilize the described water right during the term of this Lease.

5. Use by Lessee. During the term of this Lease and during any extension, Lessee shall place to beneficial use each year, all waters approved for use under the water rights and shall comply with all applicable federal, state and local laws and all rules and regulations of any agency, including IDWR applicable to such water rights, together with all state and federal environmental and water quality laws.

6. Representations by Lessor. Lessor covenants and represents that it is the true and lawful owners of the water rights and the land to which they are appurtenant, that these water rights have not lapsed, been abandoned, or forfeited, either in whole or in part and that nothing restricts or precludes Lessor from entering into this Lease and Lessee utilizing the described water rights.

7. Transfer Application. The parties acknowledge and agree that it will be necessary to submit this Lease and obtain IDWR approval of the use of said water rights by Lessee for mitigation purposes.

7.1 Lessee and Lessor will jointly seek approval of this Lease from IDWR and will cooperate with each other in securing such approval.

7.2 Lessee shall be responsible for all costs associated with accomplishing the approval of this lease and, including but not limited to, paying all applicable Water Bank and other administrative fees owing to IDWR.

7.3 This Lease is conditioned upon IDWR's approval of the use of the water by Lessee for mitigation purposes, and acknowledgment by IDWR that Lessee's use of the water under the Lease and/or placement of the water in the state water bank constitutes beneficial use of the water and will not subject any of the rights to forfeiture. In the event the approval is not obtained, the Lease may be terminated by either party.

8. Indemnification of Lessor. Lessee agrees to indemnify and hold harmless Lessor from any and all claims and demands, including legal attorney fees and costs, which may arise directly or indirectly as a result of this lease or the transfer or use of the water rights by Lessee pursuant to this Lease.

9. **Breach.** In the event either party breaches this Lease and such defaults are not cured within thirty (30) days after receipt of written notice thereof, the non-breaching party, at their option, may elect to terminate this Lease and recover any damages or pursue any other remedy available under Idaho law by reason of such breach.

10. **Assignment.** This Agreement may not be assigned by Lessee without the express written consent of Lessor.

11. **Attorney Fees.** In the event of any litigation over this Lease the prevailing party shall be entitled to recover reasonable attorney fees and costs.

12. **Binding Effect.** This Agreement shall be binding upon the respective heirs, successors and assigns of the parties.

LESSOR:

FMC IDAHO, L.L.C.

By Rob J. Hartman
Rob J. Hartman
Vice President

Date: May 22, 2002

LESSEE:

AMERICAN FALLS-ABERDEEN
AREA GROUND WATER DISTRICT

By _____
KEVIN MICHAELSON, President
Date:

BINGHAM GROUND WATER
DISTRICT

By _____
CRAIG EVANS, President
Date:

BONNEVILLE-JEFFERSON GROUND
WATER DISTRICT

By _____
WILLIAM TAYLOR,
President
Date:

LESSOR:

FMC IDAHO, L.L.C.

By _____
Rob J. Hartman
Vice President

Date:

LESSEE:

**AMERICAN FALLS-ABERDEEN
AREA GROUND WATER DISTRICT**

By *Kevin Michaelson*
KEVIN MICHAELSON, President
Date: 5-22-02

**BINGHAM GROUND WATER
DISTRICT**

By *Craig Evans*
CRAIG EVANS, President
Date: May 22, 2002

**BONNEVILLE-JEFFERSON GROUND
WATER DISTRICT**

By *William L. Taylor*
WILLIAM TAYLOR,
President
Date: May 22, 2002

2004 MAR 22 PM 02:00
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA
Case No. 19576

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 29-02284

NAME AND ADDRESS: F M C CORP
PO BOX 4111
POCAHELLO ID 83202

SOURCE: GROUND WATER

QUANTITY: 4.50 CFS
3257 90 APY

PRIORITY DATE: 03/02/1949

POINT OF DIVERSION: 106S R33E S12 S13 S13
SESESW Within Power County
NNNNNN

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Industrial	01-01 TO 12-31	4.50 CFS 3257 90 APY

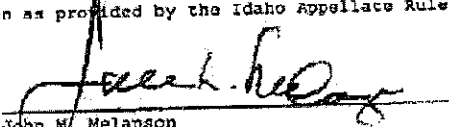
PLACE OF USE:	Industrial		Within Power County
	106S R33E S12	SWSW	SESW
		SWSE	SESE
	S13	NENE	NWNE
		SWNE	SENE
		NENW	NWNW
		SWNW	SENW
		NESE	NWSE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED in accordance with Rule 54(b) I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

2004 MAR 22 PM 02:00
DISTRICT COURT - SRBA
TWIN FALLS CO, IDAHO
FILED

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
) PARIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No 39576)
) Water Right 29-02301

NAME AND ADDRESS: F M C CORP
PO BOX 4111
POCATELLO ID 83202

SOURCE: GROUND WATER

QUANTITY: 4.00 CFS
2895 90 APY

PRIORITY DATE: 04/24/1991

POINT OF DIVERSION: 1063 R338 S13 NNNWNE Within Power County
NNNNW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Industrial	01-01 TO 12-31	4.00 CFS 2895 90 APY

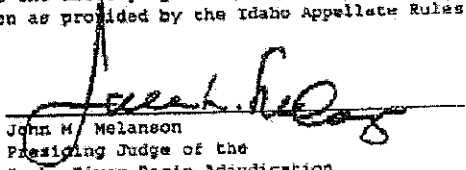
PLACE OF USE:	Industrial		Within Power County
	1063 R338 S12	SWSW	SESW
		SWSE	SESE
	S13	NENE	NWNE
		SWNE	SENE
		NENW	NWNW
		SWNW	SENW
		NSSW	NWSE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE I.C. SECTION 42-1412(6)

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules


John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

Form No 42-1409 (2) & 1/88 (Internet)

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLSIN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number

Date Received

Receipt Number

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant (s) FMC Corporation Phone (208) 236-0216Mailing Address P.O. Box 4111, Pocatello, ID Zip 832052. Date of Priority (Only one (1) per claim) September 1, 19533. Source of water supply (a) groundwater
which is tributary to (b) _____4. a. Location of existing point of diversion is: Township 06S Range 33E Section 12,
1/4 of NE 1/4 of SE 1/4, Govt. Lot, B.M., County of Power

Additional points of diversion if any: _____

b. If instream flow, beginning point of claimed instream flow is:

Township _____ Range _____ Section _____, 1/4 of 1/4 of 1/4,

Govt. Lot _____ B.M., County of _____

ending point is: Township _____ Range _____ Section _____, 1/4 of 1/4 of1/4, Govt. Lot B.M., County of5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well.1 well (#11), pumps, pipes

6. Water is claimed for the following purposes: (both dates are inclusive) (cfs) (acre feet)
- For Commercial purposes from 1/01 to 12/31 amount 1.100 or _____
- For _____ purposes from _____ to _____ amount _____ or _____
- For _____ purposes from _____ to _____ amount _____ or _____
- For _____ purposes from _____ to _____ amount _____ or _____
7. Total quantity claimed (a) 1.100 (cfs) and/or (b) _____ (acre feet)
8. Total consumptive use claimed is _____ acre feet per annum.
9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc) _____
10. Description of place of use:
- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
 - If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
<u>68</u>	<u>33E</u>	<u>12</u>				<u>C</u>													

Total number of acres irrigated 8, Commercial use

11. In which county (ies) are lands listed above as place of use located? Power
12. Do you own the property listed above as place of use? Yes X No _____
If your answer is No, describe in Remarks below the authority you have to claim this water right.
13. Describe any other water rights used at the same place and for the same purposes as described above. _____ or None ()
14. Remarks: _____

Last Name _____ Ident No. _____

EASTERN WATER MEASUREMENT DISTRICT

SUPPLEMENTAL DATA FORM A

SKETCH OF IRRIGATED LANDS AND MAJOR COMPONENTS OF DELIVERY SYSTEM/S

crop	acres
1	
2	
3	
4	
total	

15. Basis of Claim (check one) Beneficial Use _____ Posted Notice _____ License ☒ Permit G24451
 Decree _____
 If applicable provide IDWR Water Right Number _____ Decree Date _____
 Court _____ Case Number _____
 Plaintiff vs Defendant _____

16. Signature (s)

(a.) By signing below, I/We acknowledge that I/We have received, read, and understand the form entitled
 "How you will receive notice in the Snake River Basin Adjudication" (b) I/We do _____ do not _____
 wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments _____

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true
 and correct.

Signature of Claimant (s) _____

Date _____

Date _____

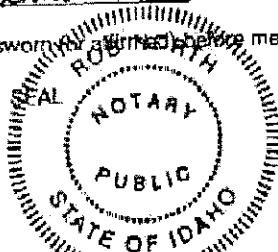
For Organizations: I do solemnly swear or affirm that I am Vice President
 Title _____
 of FMC Idaho LLC that I have signed the foregoing
 Organization _____
 document in the space below as Vice President of FMC Idaho LLC
 Title _____ Organization _____
 and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent Rob J. Hartman

Title and Organization Vice President, FMC Idaho LLC Date May 9, 2005

State of Idaho/or _____ } SS.
 County of Bannock }

Subscribed and sworn to and affirmed before me this 9th day of May 2005



Notary Public Rob J. Hartman

Residing at Bannock County

My Commission Expires 6/16/09

Please Print Name

17. Notice of Appearance
 Notice is hereby given that I, Shelley M. Davis will be acting as attorney at law on behalf
 of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above
 should be mailed to me at the address listed below.

Signature Shelley M. Davis

Address Barker Rosholt, Senior, LLP, P.O. Box 2137, 205 N. 10th St., Ste 520
Boise, ID 83701-2137

Date 5/9/05

Last Name _____ Ident. Number _____